

111TH CONGRESS
1ST SESSION

H. R. 683

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2009

Ms. BERKLEY introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 with respect to the proper tax treatment of certain indebtedness discharged in 2009 or 2010, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROPER TAX TREATMENT OF CERTAIN FINAN-**
4 **CIAL INDEBTEDNESS DISCHARGED IN 2009**
5 **OR 2010.**

6 (a) IN GENERAL.—Section 108(a)(1) of the Internal
7 Revenue Code of 1986 (relating to exclusion from gross
8 income) is amended by striking “or” at the end of sub-
9 paragraph (D), by striking the period at the end of sub-

1 paragraph (E) and inserting “, or” and by adding at the
 2 end the following new subparagraph:

3 “(F) the indebtedness discharged is appli-
 4 cable financial indebtedness which is discharged
 5 after December 31, 2008, and before January
 6 1, 2011.”.

7 (b) APPLICABLE FINANCIAL INDEBTEDNESS.—Sec-
 8 tion 108 of such Code is amended by adding at the end
 9 the following new subsection:

10 “(i) DEFINITIONS AND RULES RELATING TO APPLI-
 11 CABLE FINANCIAL INDEBTEDNESS.—For purposes of sub-
 12 section (a)(1)(F)—

13 “(1) APPLICABLE FINANCIAL INDEBTED-
 14 NESS.—The term ‘applicable financial indebtedness’
 15 means indebtedness—

16 “(A) which was originally issued by a cor-
 17 poration, or by a partnership engaged in a
 18 trade or business (other than a trade or busi-
 19 ness of trading in stocks or securities for the
 20 partnership’s own account), and

21 “(B) which is—

22 “(i) indebtedness originally issued or
 23 syndicated by a financial institution (as de-
 24 fined in section 582(c)(2) without regard
 25 to subparagraph (C) thereof) or a deposi-

1 tory institution holding company (as de-
2 fined in section 3(w)(1) of the Federal De-
3 posit Insurance Act (12 U.S.C.
4 1813(w)(1)),

5 “(ii) indebtedness which—

6 “(I) constitutes a security within
7 the meaning of the Securities Act of
8 1933, and

9 “(II) was originally issued pursu-
10 ant to a registration statement that
11 was declared effective under such Act
12 or pursuant to an exemption from, or
13 in a transaction not subject to, the
14 registration requirements of such Act,
15 or

16 “(iii) indebtedness that is traded on
17 an established market (within the meaning
18 of section 1273(b)(3)).

19 “(2) APPLICABLE DISCHARGES.—Subsection
20 (a)(1)(F) shall only apply to a discharge of applica-
21 ble financial indebtedness if such discharge is by
22 reason of—

23 “(A) the acquisition of the indebtedness by
24 the issuer of the indebtedness,

1 “(B) the acquisition of the indebtedness of
 2 the issuer by a person related, or who becomes
 3 related, to the issuer of the indebtedness from
 4 a person who is not related to the issuer, or

5 “(C) the significant modification of the in-
 6 debtedness (within the meaning of section
 7 1001).

8 For purposes of subparagraph (B), the determina-
 9 tion of whether a person is related to another person
 10 shall be made in the same manner as under sub-
 11 section (e)(4).”.

12 (c) COORDINATION OF EXCLUSIONS.—Section
 13 108(a)(2) of such Code is amended—

14 (1) by striking “and (E)” in subparagraph (A)
 15 and inserting “(E), and (F)”, and

16 (2) by adding at the end the following new sub-
 17 paragraph:

18 “(D) FINANCIAL INDEBTEDNESS EXCLU-
 19 SION TAKES PRECEDENCE OVER INSOLVENCY
 20 EXCLUSION UNLESS ELECTED OTHERWISE.—
 21 Paragraph (1)(B) shall not apply to a discharge
 22 to which paragraph (1)(F) applies unless the
 23 taxpayer elects to apply paragraph (1)(B) in
 24 lieu of paragraph (1)(F).”.

1 (d) EARNINGS AND PROFITS.—Section 312(l) of such
2 Code is amended by adding at the end the following new
3 paragraph:

4 “(3) DISCHARGE OF CERTAIN FINANCIAL IN-
5 DEBTEDNESS.—The earnings and profits of a cor-
6 poration shall not include income from a discharge
7 of indebtedness to which section 108(a)(1)(F) ap-
8 plies.”.

9 (e) OTHER SPECIAL RULES.—

10 (1) TREATMENT AS MARKET DISCOUNT
11 BOND.—For purposes of the Internal Revenue Code
12 of 1986, any indebtedness acquired in a transaction
13 described in section 108(i)(2)(B) of such Code (as
14 added by subsection (b)), or received pursuant to an
15 exchange arising from a transaction described in sec-
16 tion 108(i)(2)(C) of such Code (as so added), shall
17 be treated as a market discount bond (within the
18 meaning of section 1278(a)(1) of such Code) having
19 market discount equal to the amount (if any) which,
20 but for section 108(a)(1)(F) of such Code (as added
21 by subsection (a)), would have been includible in
22 gross income by reason of the discharge of such in-
23 debtedness in any such transaction.

24 (2) ACQUISITIONS BY FOREIGN PERSONS.—Any
25 interest (or original issue discount) paid or accrued

1 after December 31, 2008, and before January 1,
2 2011, on indebtedness which is described in section
3 108(a)(1)(F) of such Code by reason of the acquisi-
4 tion of such indebtedness by a foreign person or by
5 a partnership (or other pass-through entity) in
6 which a foreign person is a partner (or other profits
7 or capital owner) shall not be subject to sections
8 871(h)(3), 881(c)(3)(B), or 881(c)(3)(C) of such
9 Code.

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